IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.Rev.Pet.No. 425 of 2007()

CRL. M.P. NO. 168/05 IN SC.90/2001 of ASSISTANT SESSIONS COURT, KOTTARAKKARA

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REVN. PETITIONER: ACCUSED.

CHANDRA BABU, S/O.RAGHAVAN,
VATTAKKAITHA HOUSE, NARIKKAL,
KARAVALOOR VILLAGE.

BY ADV. SRI.A.K.ALEX

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. AMJAD ALI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/02/2007, ALONG WITH CRRP NOS. 423 OF 2007 & 821/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.A. NO. 1253/2007 IN CRL. R.P. 425/2007

DISMISSED

28.02.2007 SD/- K.R.UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

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CRL. R.P. NO. 425, 423 & 821 OF 2007

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Dated this the 28th day of February 2007

O R D E R

The revision petitioner, who is the accused in C.C. No. 90/2001 with respect to the offence under section 5 of the Explosive Substances Act, 1908, has sought for setting aside the order of the court below dismissing the application filed by him for discharge on the ground that the consent of the Central Government has not been obtained as per section 7 of the Explosive Substances Act.

2. I find that the trial court has considered the matter and rejected the plea of the petitioner as the statute stands amended with effect from 01.02.2002. Section 7 of the Act provides that no court can proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate. It was the pre-amended provision that the trial can be initiated only with the consent of the Central Government.

The contention of the revision petitioner is that the consent of the authority on the date of the offence ought to have been obtained. I find the above contention cannot be upheld in view of the fact that the restriction is only for the commencement of the trial and not for initiating prosecution. I find that the court below is perfectly justified in rejecting the contention of the revision petitioner/accused.

3. The counsel for the petitioner has produced the judgment of this court in another matter, i.e., in Crl. M.C 10852/2002 as per which this court has directed that the Magistrate shall proceed with the matter only with the consent of the Central Government or the duly delegated authority as on the date of the alleged offence is produced. It is mentioned in the above order that no order was produced to show that the District Collector was made as the delegated authority. The contention of the Government Pleader in the above case was that the consent of the District Collector was obtained. I find that the observation of the court in the above matter was in the

background of the particular facts as brought out before the court and has no relevance to the facts of the present case. I find that it is impossible to get the consent of the former authority when it has no power as on the date of the commencement of the trial.

The Criminal Revision Petition is dismissed accordingly.

K.R. UDAYABHANU, JUDGE.

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